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VIOLENT CRIMES DIRECTED AT INTELLIGENCE PERSONNEL

SEPTEMBER 23 (legislative day, September 8), 1982.—Ordered to be printed

Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2552]

The Committee on the Judiciary, to which was referred the bill (S. 2552) to protect the safety of intelligence personnel and certain other persons, having considered the same, reports favorably thereon with an amendment to the text and recommends that the bill as amended do pass.

PURPOSE AND SUMMARY

The purpose of the proposed legislation is to amend title 18, United States Code, to provide federal criminal penalties for acts of violence directed at United States intelligence personnel performing official duties, aliens admitted to permanent residence in the United States under section 7 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403h) because of their contribution to our nation's intelligence efforts, and persons temporarily present in the country under the auspices of the Intelligence Community in furtherance of U.S. intelligence objectives. Although the federal government has a compelling interest in the physical safety of these three categories of individuals in the fulfillment of national intelligence requirements, federal law currently provides no criminal penalties for violent attacks upon them. Such attacks constitute crimes only under state and municipal laws, and local jurisdictions will often lack the resources and special expertise necessary to investigate and prosecute violent crimes which interfere with the mission of the U.S. Intelligence Community. The Committee believes that federal statutory protection for intelligence personnel is necessary and appropriate in addition to the protection afforded by the general violent crimes statutes of the several States because of the special federal interests involved.

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History of the Legislation

The proposed legislation was initiated by the Director of Central Intelligence, endorsed by the Department of Justice, and supported by the Administration for inclusion in S. 1127, the Intelligence Authorization Act for Fiscal Year 1982. The Select Committee on Intelligence reported this legislation as section 510 of S. 1127 on May 6, 1981, and the Senate passed the legislation on July 16, 1981.

The House of Representatives version of the Intelligence Authorization Act for Fiscal Year 1982 contained no intelligence personnel protection provisions and the House conferees insisted upon its consideration as separate legislation for reasons related to the legislative jurisdiction of several committees of the House. Consequently, the Conference Committee deleted section 510 from the Intelligence Authorization Bill.

Senator Biden, joined by the Chairman of the Committee on the Judiciary, Senator Thurmond, and the entire membership of the Select Committee on Intelligence, sponsored S. 2552. After considering the bill, on August 4, 1982 the Committee on the Judiciary unanimously ordered the bill favorably reported and recommended that it do pass, with a technical amendment.

Committee Technical Amendment

The Committee reported the bill essentially as it was introduced. The Committee, however, did adopt one technical amendment to subsection 1(b) of the bill. This amendment was necessary in order to correct an anomaly present in the bill as introduced. The Committee wishes to discuss this amendment in some detail so as to avoid any misunderstandings regarding the technical amendment.

As introduced, subsection 1(b), when combined with other provisions in the bill, would have made the following additions to (underlined) and deletions from (bracketed) section 114 of title 18, United States Code:

> Whoever kills * * * (enumeration of federal officials protected by section 1114) [while engaged in the performance of his official duties] or on account of the performance of his official duties or any officer or employee of any department or agency within the Intelligence Community (as defined in section 3.4(F) of Executive Order 12333, December 8, 1981, or successor orders) not already covered under the terms of this section or any * * * (continued enumeration of protected federal officials) engaged in or on account of the performance of his official duties * * *

Subsection 1(b) was intended to do two things: to add to the list of protected officials of the Intelligence Community and to strike from section 1114 the phrase "while engaged in the performance of his official duties or on account of the performance of his official duties". It was appropriate to strike this language since the phrase "engaged in or on account of the performance of his official duties" appears a second time at the end of section 1114 and thus covers all officers enumerated therein.

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Through an unintended oversight, however, subsection 1(b) of the bill as introduced struck only the first clause of the duplicated phrase, but not the last clause.

Hence, the Committee corrected this oversight by the technical amendment to subsection 1(b). This amendment strikes the entire clause which the bill, as originally introduced, had been intended to strike. With this amendment, section 1114 would appear as follows:

> Whoever kills * * * (enumeration of federal officials protected by section 1114) [while engaged in the performance of his official duties or on account of the performance of his official duties] or any officer or employee of any department or agency within the Intelligence Community (as defined in section 3.4(F) of Executive Order 12333, December 8, 1981, or successor orders) not already covered under the terms of this section or any * * * (continued enumeration of protected federal officials) engaged in or on account of the performance of his official duties * * *

The Committee emphasizes that its amendment is a technical amendment which merely eliminates from section 1114 surplus language. The Committee amendment has no substantive legal effect since the stricken language duplicates language which will remain in section 1114. Section 1114 will continue to apply only in cases of violence directed at federal officers and employees listed in section 1114 who are engaged in the performance of their official duties, or at whom the violence is directed on account of performance of their official duties.

Section-by-Section Analysis

Section 1 of the bill amends section 1114 of title 18, United States Code, which defines as as federal offense killing any of the enumerated officers and employees of the United States while they are engaged in the performance of official duties, or on account of their performance of official duties.

Subsection (a) amends section 1114 of title 18 to define attempting to kill the enumerated officers as a federal offense, as well as succeeding in killing them. Under current federal law, if any of the enumerated officers or employees is severely injured in a violent attack while performing his duties, but does not actually die from the attack, the attacker cannot be charged with any federal crime greater than assault under section 111 of title 18, which is punishable by three years imprisonment and/or a $5,000 fine, or ten years imprisonment and/or a $10,000 fine if the attacker used a deadly weapon. For a violent maiming of an enumerated federal officer or employee, an assault charge would result in too light a punishment for the attacker in relationship to the gravity of his criminal conduct, but, unless the victim dies, no greater crime could be charged. Subsection (a) corrects this anomaly by providing attempted murder as an offense intermediate between assault and murder.

Subsection (b) strikes surplus language from section 1114 and adds officers and employees of the department and agencies within the Intelligence Community to the enumeration of federal personnel pro-

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tected under section 1114. By cross reference contained in section 111 of title 18, assaulting Intelligence Community personnel engaged in or on account of the performance of official duties also becomes a crime.

Subsection (c) provides that the punishment for attempted murder of enumerated federal personnel defined as an offense by virtue of subsection 1(a) of the bill, shall be imprisoned for not more than twenty years.

Section 2 of the bill enacts a new section 1118 of title 18, United States Code, defining as federal offenses the murder, attempted murder, manslaughter, attempted manslaughter, assault, extortion, or kidnaping of aliens granted permanent residence in the United States under section 7 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403h). Under section 7 of the CIA Act, the Director of Central Intelligence, the Attorney General, and the Commissioner of Immigration acting jointly may admit a particular alien to permanent residence when the alien's entry into the United States is in the interest of national security or essential to the furtherance of the national intelligence mission. These individuals, who may have been clandestine intelligence agents, sources, or defectors and their immediate families, often reside in the United States under assumed identities and may continue to provide assistance to the Intelligence Community. These individuals merit special federal protection because of their past and continuing contributions to the United States intelligence effort and the associated grave and continuing risks they endure to assist the United States. The number of individuals admitted to the United States for permanent residence under section 7 of the CIA Act cannot exceed one hundred per year; thus, the number of people extended protection by the new section 1118 is relatively small.

Section 3 of the bill enacts a new section 1119 of title 18, United States Code, defining as federal offenses the murder, attempted murder, manslaughter, attempted manslaughter, assault, threatening, extortion, or kidnaping of persons certified by the Director of Central Intelligence or his designee to be present in the United States under Intelligence Community auspices. Persons in the United States under the auspices of departments or agencies within the Intelligence Community generally include foreign nationals whose temporary presence in the United States furthers United States intelligence objectives. This category of individuals could include intelligence sources, members of cooperative foreign intelligence services, and foreign nationals working abroad for the United States. According such persons in the United States under the auspices of the Intelligence Community special federal protection is in the national security interest of the United States. On average, a few hundred persons enter the United States under Intelligence Community auspices for varying short periods of time during a given year. Thus, the number of persons protected under new section 1119 at any one time will be relatively small.

Section 4 of the bill makes changes to the table of sections for chapter 51 of title 18, United States Code, necessitated by the enactment of new sections 1118 and 1119.

Cost Estimate

In accordance with section 252(a) of the Legislative Reorganization Act (2 U.S.C. 190(j)), the Committee states that the proposed legislation will require no federal expenditures.

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Regulatory Impact Evaluation

In accordance with subsection (b) of paragraph 11 of Rule XXVI of the Standing Rules of the Senate, the Committee states that the proposed legislation will have no regulatory or privacy impact.

Changes in Existing Law

In compliance with paragraph (4) of rule XXIX of the Rules of the Senate, changes in existing law made by the bill are shown as follows: existing law proposed to be omitted is enclosed by black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman.

TITLE 18

§ 1114. Protection of officers and employees of the United States

Whoever kills *or attempts to kill* any judge of the United States, any United States Attorney, any Assistant United States Attorney, or any United States marshal or deputy marshal or person employed to assist such marshal or deputy marshal, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, any officer or employee of the Postal Service, any officer or employee of the Secret Service or of the Drug Enforcement Administration, any officer or member of the United States Capitol Police, any officer or enlisted man of the Coast Guard, any officer or employee of any United States penal or correctional institution, any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties, any immigration officer, any officer or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any employee of the Department of Agriculture designated by the Secretary of Agriculture to carry out any law or regulation, or to perform any function in connection with any Federal or State program or any program of Puerto Rico, Guam, the Virgin Islands of the United States, or the District of Columbia, for the control or eradication or prevention of the introduction or dissemination of animal diseases, any officer or employee of the National Park Service, any officer or employee of, or assigned to duty in, the field service of the Bureau of Land Management, or any officer or employee of the Indian field service of the United States, or any officer or employee of the National Aeronautics and Space Administration directed to guard and protect property of the United States under the administration and control of the National Aeronautics and Space Administration, any security officer of the Department of State or the Foreign Service, or any officer or employee of the Department of Health, Education, and Welfare, the Consumer Product Safety Commission, Interstate Commerce Commission, the Department of Commerce, or of the Department of Labor or of the Department of the Interior, or of the Department of Agriculture assigned to perform investigative, inspection, or law enforcement functions, or any officer or employee of the Vet-

erans' Administration assigned to perform investigative or law enforcement function, [while engaged in the performance of his official duties, or on account of the performance of his official duties,] *or any officer or employee of any department or agency within the Intelligence Community (as defined in section 3.4(F) of Executive Order 12333, December 8, 1981, or successor orders) not already covered under the terms of this section* or any attorney, liquidator, examiner, claim agent, or other employee of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the Comptroller of the currency, the Federal Home Loan Bank Board, the Board of Governors of the Federal Reserve System, any Federal Reserve bank, or the National Credit Union Administration engaged in or on account of the performance of his official duties shall be punished as provided under sections 1111 and 1112 of this title, *except that any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years.*

* * * * * * *

§ *1118. Murder, manslaughter, assaults, threats, extortion, or kidnaping of persons given entry into the United States for permanent residence pursuant to section 7 of the Central Intelligence Agency Act of 1949.*

(a) Whoever kills or attempts to kill a person given entry into the United States for permanent residence pursuant to the provisions of section 7 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403h) shall be punished as provided under sections 1111, 1112, and 1113 of this title, except that any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life, and any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years.

(b) Whoever engages in conduct proscribed by section 112, 878, or 1201 of this title against any person described in subsection (a) shall be punished as provided under those sections.

* * * * * * *

§ *1119. Murder, manslaughter, assaults, threats, extortion or kidnaping of persons present in the United States under intelligence auspices.*

(a) Whoever kills or attempts to kill a person certified by the Director of Central Intelligence or his designee to be present in the United States under the auspices of any department or agency within the Intelligence Community (as defined in section 3.4(F) of Executive Order 12333, December 8, 1981, or successor orders) shall be punished as provided under sections 1111, 1112, and 1113 of this title, except that any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life, and any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years.

(b) Whoever engages in conduct proscribed by section 112, 878, or 1201, of this title against any person described in subsection (a) shall be punished as provided under those sections.

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CHAPTER 51—HOMICIDE

Sec.

1111. Murder.
1112. Manslaughter.
1113. Attempt to commit murder or manslaughter.
1114. Protection of officers and employees of the United States.
1115. Misconduct or neglect of ship officers.
1116. Murder or manslaughter of foreign officials, official guests, or internationally protected persons.
1117. Conspiracy to murder.
1118. Murder, manslaughter, assaults, threats, or kidnaping of persons given entry into the United States for permanent residence pursuant to section 7 of the Central Intelligence Agency Act of 1949.
1119. Murder, manslaughter, assaults, threats, extortion, or kidnaping of persons present in the United States under intelligence auspices.

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